

The Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

L-W AUBURN CO., a California general
partnership

Plaintiff,

v.

HOLLINGSWORTH LOGISTICS
GROUP, L.L.C., a Michigan limited liability
company

Defendant.

Case No. 2:23-CV-00051-JNW

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL BUSINESS INFORMATION”

2 “Confidential Business Information” shall include the following documents and tangible
3 things produced or otherwise exchanged: confidential information regarding third parties, such as
4 pricing offered by third parties to the parties; confidential information related to the terms of any
5 proposed or contemplated purchase, sale, or lease of the property at 2402 R Street NW, Auburn
6 Washington 98001; the parties’ financial statements; the parties’ banking information; identifying
7 information about the parties’ individual members and/or limited partners; the parties’ operating
8 and/or partnership agreements; and documents that identify the confidential business terms
9 between Defendant and its customer, the United States Postal Service (“USPS”). Confidential
10 business terms may include the financial terms of the contracts and agreements between Defendant
11 and the USPS, and proprietary operational processes and procedures relating to Defendant’s work
12 for the USPS.

13 3. SCOPE

14 The protections conferred by this agreement cover not only Confidential Business
15 Information (as defined above), but also (1) any information copied or extracted from Confidential
16 Business Information; (2) all copies, excerpts, summaries, or compilations of Confidential
17 Business Information; and (3) any testimony, conversations, or presentations by parties or their
18 counsel that might reveal Confidential Business Information.

19 However, the protections conferred by this agreement do not cover information that is in
20 the public domain or becomes part of the public domain through trial or otherwise.

21 4. ACCESS TO AND USE OF CONFIDENTIAL BUSINESS INFORMATION

22 4.1 Basic Principles. A receiving party may use Confidential Business Information that
23 is disclosed or produced by another party or by a non-party in connection with this case only for
24 prosecuting, defending, or attempting to settle this litigation. Confidential Business Information
25 may be disclosed only to the categories of persons and under the conditions described in this

1 agreement. Confidential Business Information must be stored and maintained by a receiving party
 2 at a location and in a secure manner that ensures that access is limited to the persons authorized
 3 under this agreement.

4 4.2 Disclosure of “CONFIDENTIAL BUSINESS INFORMATION.” Unless
 5 otherwise ordered by the court or permitted in writing by the designating party, a receiving party
 6 may disclose any Confidential Business Information only to:

7 (a) the receiving party’s counsel of record in this action, as well as employees
 8 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

9 (b) the officers, directors, and employees (including in house counsel) of the
 10 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
 11 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
 12 designated;

13 (c) experts and consultants to whom disclosure is reasonably necessary for this
 14 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the court, court personnel, and court reporters and their staff;

16 (e) copy or imaging services retained by counsel to assist in the duplication of
 17 Confidential Business Information, provided that counsel for the party retaining the copy or
 18 imaging service instructs the service not to disclose any Confidential Business Information to third
 19 parties and to immediately return all originals and copies of any Confidential Business
 20 Information;

21 (f) during their depositions, witnesses in the action to whom disclosure is
 22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
 23 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
 24 transcribed deposition testimony or exhibits to depositions that reveal Confidential Business
 25 Information must be separately bound by the court reporter and may not be disclosed to anyone

1 except as permitted under this agreement;

2 (g) the author or recipient of a document containing the information or a
3 custodian or other person who otherwise possessed or knew the information.

4 4.3 Filing Confidential Business Information. Before filing Confidential Business
5 Information or discussing or referencing such material in court filings, the filing party shall confer
6 with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether
7 the designating party will remove the protected designation, whether the document can be
8 redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the
9 meet and confer process, the designating party must identify the basis for sealing the specific
10 Confidential Business Information at issue, and the filing party shall include this basis in its motion
11 to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets
12 forth the procedures that must be followed and the standards that will be applied when a party
13 seeks permission from the court to file material under seal. A party who seeks to maintain the
14 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
15 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in
16 the motion to seal being denied, in accordance with the strong presumption of public access to the
17 Court's files.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
20 or non-party that designates information or items for protection under this agreement must take
21 care to limit any such designation to specific material that qualifies under the appropriate
22 standards. The designating party must designate for protection only those parts of material,
23 documents, items, or oral or written communications that qualify, so that other portions of the
24 material, documents, items, or communications for which protection is not warranted are not swept
25 unjustifiably within the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 2 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
 3 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
 4 and burdens on other parties) expose the designating party to sanctions.

5 If it comes to a designating party's attention that information or items that it designated for
 6 protection do not qualify for protection, the designating party must promptly notify all other parties
 7 that it is withdrawing the mistaken designation.

8
 9 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 10 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
 11 ordered, disclosure or discovery material that qualifies for protection under this agreement must
 12 be clearly so designated before or when the material is disclosed or produced.

13 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
 14 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
 15 the designating party must affix the phrase "CONFIDENTIAL BUSINESS INFORMATION –
 16 SUBJECT TO PROTECTIVE ORDER" to each page that contains Confidential Business
 17 Information. If only a portion or portions of the material on a page qualifies for protection, the
 18 producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
 19 markings in the margins).

20 (b) Testimony given in deposition or in other pretrial proceedings: the parties
 21 and any participating non-parties must identify on the record, during the deposition or other pretrial
 22 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
 23 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
 24 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
 25 exhibits thereto, as protected. If a party or non-party desires to protect Confidential Business
 Information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the phrase “CONFIDENTIAL BUSINESS INFORMATION – SUBJECT TO PROTECTIVE ORDER.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of Confidential Business Information at any time. Unless a prompt challenge to a designating party’s protected designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a protected designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding protected designations without court involvement. Any motion regarding protected designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court

intervention, the designating party may file and serve a motion to retain the protected designation under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as Confidential Business Information until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL BUSINESS INFORMATION,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose Confidential Business Information may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential Business Information to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this

1 agreement, and (d) request that such person or persons execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3
4 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
5 **MATERIAL**

6 When a producing party gives notice to receiving parties that certain inadvertently
7 produced material is subject to a claim of privilege or other protection, the obligations of the
8 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
9 is not intended to modify whatever procedure may be established in an e-discovery order or
10 agreement that provides for production without prior privilege review. The parties agree to the
11 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

12 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

13 Within 60 days after the termination of this action, including all appeals, each receiving
14 party must return all Confidential Business Information to the producing party, including all
15 copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate
16 methods of destruction.

17 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
18 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
19 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
20 product, even if such materials contain Confidential Business Information.

21 The confidentiality obligations imposed by this agreement shall remain in effect until a
22 designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: November 20, 2023

DATED: November 20, 2023

SCHWABE, WILLIAMSON & WYATT, P.C.

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PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party.

DATED: December 4, 2023.



Jamal N. Whitehead
United States District Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Western District of Washington on [date] in the
 case of L-W AUBURN CO., a California general partnership, Plaintiff v. HOLLINGSWORTH
 LOGISTICS GROUP, L.L.C., a Michigan limited liability company, Defendant, Case No. 2:23-
 CV-00051-JNW. I agree to comply with and to be bound by all the terms of this Stipulated
 Protective Order and I understand and acknowledge that failure to so comply could expose me to
 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
 any manner any information or item that is subject to this Stipulated Protective Order to any person
 or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____